UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
WESTMORELAND COAL COMPANY, et al.,	Case No. 18-35672 (DRJ)
Debtors.	(Jointly Administered)

/

EMERGENCY MOTION OF MAR-BOW VALUE PARTNERS, LLC, FOR ENTRY OF AN ORDER COMPELLING MCKINSEY RECOVERY AND TRANSFORMATION SERVICES U.S., LLC, TO DISCLOSE ALL OF THE INVESTMENTS OF ITS AFFILIATE MIO PARTNERS, INC., AND ANY OTHER MCKINSEY AFFILIATE, IN ANY OF THE DEBTORS OR THEIR CREDITORS IN THESE CASES

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELEIF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANGED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

AN EMERGENCY HEARING HAS BEEN REQUESTED.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HON. DAVID R. JONES, CHIEF UNITED STATES BANKRUPTCY JUDGE:

Creditor Mar-Bow Value Partners, LLC ("**Mar-Bow**"), through counsel, moves for entry of an order compelling McKinsey Recovery and Transformation Services U.S., LLC, ("**McKinsey**") to disclose all of the investments of its affiliate MIO Partners, Inc. ("**MIO**") and any other McKinsey affiliate in any of the Debtors or their creditors in these cases.

Preliminary Statement

Over four months ago, Mar-Bow filed its first objection to McKinsey's employment in this matter, identifying a litany of severe deficiencies in McKinsey's Rule 2014 disclosures. Chief among those violations is McKinsey's failure to disclose the investments of its affiliates (most notably, MIO) in interested parties. The law is clear that an applicant with an ownership interest in an interested party simply is not, and can never be, qualified to serve as a professional to the Debtor. 11 U.S.C §§ 101(14) and 327(a). And yet, despite Rule 2014, despite the fact that the disclosure of such interests is critical to this Court's ability to rule on the Debtors' application to employ McKinsey Mar-Bow's objection, and despite Mar-Bow's service of document requests and interrogatories seeking disclosure of McKinsey's investments in interested parties over three and a half months ago,[1] *McKinsey has yet to provide any information whatsoever on this monumental and dispositive issue*.

[1] *See, e.g.*, Mar-Bow Value Partners LLC's First Request to McKinsey Restructuring and Transformation Services U.S., LLC for the Production of Documents, dated Dec. 14, 2018 (attached hereto as "**Exhibit 1**") at 1, Request No. 1 ("All documents concerning any investments or other financial or ownership interest currently or previously held by You (including without limitation through MIO), whether directly or indirectly, in any of the Interested Parties."); Mar-Bow Value Partners LLC's First Set of Interrogatories to McKinsey Restructuring and Transformation Services U.S., LLC, dated Dec. 14, 2018 (attached hereto as "**Exhibit 2**") at 11, Interrogatory No. 8 ("Identify all Interested Parties in which You have ever held, directly or indirectly, an investment or other financial or ownership interest and state the dates and nature of such investments or investments.").

The time to move forward on Mar-Bow's objection and determine whether McKinsey is qualified to serve as a professional in this matter is long overdue. It is notable that McKinsey has *never* denied the MIO's holdings in the Debtors' estates or in interested parties. Accordingly, this emergency motion seeks prompt and highly discrete relief: an order compelling McKinsey to (a) identify all equity or debt investments held or managed by it or any of its affiliates (including MIO) in any Debtor, or in any party in interest, competitor, customer, or supplier; and (b) disclose information sufficient to allow the Court to evaluate the amount and nature of those investments.

Emergency Consideration Requested

Pursuant to Bankruptcy Local Rule 9013-1(i), Mar-Bow respectfully requests emergency consideration of this motion in light of the facts and circumstances of this case. Specifically, McKinsey's continued non-disclosure actively undermines public trust in the bankruptcy process. This is especially true because McKinsey continues to develop a "protocol" in a bad-faith effort to rewrite the rules, a dispensation afforded no other professional. McKinsey's non-disclosures in this case are particularly urgent and troubling in light of the recent revelation of a secret settlement with the litigation trust in the *SunEdison* case for $17.5 million, discussed at length in Mar-Bow's Response to McKinsey's Third Status Report (*see* Dkt. 1699), and McKinsey's active concealment of investments from Judge Huennekens in the *ANR* case, which is discussed further below. Every day of delay exacerbates the harm to the process.

Although Mar-Bow has in fact served, and repeatedly conferred with McKinsey on, multiple discovery requests pertaining to the information sought in this motion, those requests are not required to grant the relief requested here. Information regarding McKinsey's investments in the Debtor and other interested parties is essential to permit the Court to fulfill its obligation to rule on McKinsey's disinterestedness (or lack thereof), and therefore must be produced regardless of whether Mar-Bow has requested it.

Argument

A. The Law Requires Disclosure of McKinsey's Investment Interests Regardless of Whether Those Interests Are Held by Affiliates, and Regardless of Whether There is a "Wall" Between MIO and McKinsey.

For the benefit of McKinsey's partners and employees, McKinsey holds investment interests in the Debtors, members of the two *Ad Hoc* Groups and various interested parties. *See* Mar-Bow's Amended Objection, Dkt. 669 ¶¶ 97-108. The law is clear that a proposed professional cannot hold such investment interests. With respect to the *Debtor*, 11 U.S.C. § 327 provides that professionals must be "disinterested" and must not hold an "interest adverse to the estate." 11 U.S.C. §§ 101(14)(A) and 101(17) define a "disinterested person" as one that is not an equity security holder of the Debtor. Moreover, 11 U.S.C. § 101(14)(C) provides that a "disinterested person" must not "have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, ***by reason of any direct or indirect*** relationship to, connection with, or interest in, ***the debtor*** . . . ." (Emphasis added.) And under the absolute priority rule of 11 U.S.C. § 1129(b), creditors must be paid in full before equity holders can receive anything. Thus, McKinsey's equity interest in the Debtor is materially adverse to "any class of creditors."

Accordingly, McKinsey's ownership interest in the Debtor is disqualifying under the plain language of the applicable statutes. *See, e.g.*, *In re Glosser Bros., Inc.*, 102 B.R. 38, 39 (Bankr. W.D. Pa. 1989) (denying the debtor's application to employ Bear Sterns as their financial advisor and investment banker because of its equity interest in the Debtors' parent company); *In re Intech Capital Corp.*, 87 B.R. 232 (Bankr. D. Conn. 1988) (holding that law firm was disqualified from being debtor's counsel by virtue of fact that 16 law firm partners currently held four percent of outstanding equity security shares of debtor); *In re Cropper Co., Inc.*, 35 B.R. 625, 631 (Bankr.

M.D. Ga. 1983) ("Congress made it clear that equity security holders are conclusively not disinterested."); *In re Anver*, 44 B.R. 615, 618 (Bankr. D. Mass. 1984) ("Code's definition of disinterested is nonconditioned on a requirement of substantial stock interest but merely an equity interest ..."); *In re Leisure Dynamics, Inc.*, 32 B.R. 751, 752 (Bankr. D. Minn. 1983), *supplemented sub nom. In re Leisure Dynamics*, 32 B.R. 753 (Bankr. D. Minn. 1983), *aff'd sub nom. In re Leisure Dynamics, Inc.*, 33 B.R. 121 (D. Minn. 1983) (denying the employment application for counsel who were equity security holders in the debtor); *In re Daig Corp.*, 48 B.R. 121, 132–33 (Bankr. D. Minn. 1985), *subsequently aff'd*, 799 F.2d 1251 (8th Cir. 1986) ("the section 101(13)(A) [now 101(14)] reference to 'equity security holder[s]' carries with it a presumption that an equity security holder of the debtor will not be capable of acting with that degree of impartiality and disinterested judgment which is expected of professional persons employed pursuant to section 327(a)."); *In re Michigan Interstate Ry. Co., Inc.*, 32 B.R. 327, 328 (Bankr. E.D. Mich. 1983) (ordering the removal of debtor's counsel because of his equity security interest in the debtor); *In re Yuba Westgold, Inc.*, 157 B.R. 869, 871 (Bankr. N.D. Iowa 1993) (denying employment to a professional who was an indirect equity security holder of the debtor).

Similarly, McKinsey's interests in *creditors* of the estate are disqualifying because creditors obviously hold an interest adverse to the estate and equity holders of the Debtor in violation of Section 327. Under 11 U.S.C. § 101(14)(C), a "disinterested person" must not "have an interest materially adverse to the interest of the ***estate*** . . . ***or equity security holders***, . . . ***for any . . . reason***." (Emphasis added.)[2] *See, e.g.*, *In re Ochoa*, 74 B.R. 191 (Bankr. N.D.N.Y. 1987)

[2] Equity or debt interests in other interested parties such as competitors, customers, or suppliers of the Debtor impermissibly also create an interest materially adverse to the estate in violation of 11 USC § 101(14)(C). "[I]t should be noted that section 101(13) [now 101(14)] sets forth a broad definitional category for the phrase 'disinterested person' which excludes persons with even the slightest interest or relationship that would color the independent and impartial

(deny fees to law firm whose managing partner was partner in partnership creditor holding judgment lien against debtor; that connection fell within proscription of statute prohibiting employment of attorneys holding interest adverse to estate or not disinterested persons).

McKinsey insists that it need not disclose MIO's disqualifying interests in the Debtor or creditors because (1) MIO is its affiliate, and (2) there is a "wall" between MIO and the rest of McKinsey such that non-MIO personnel are unaware of the MIO's interests. Both excuses fail as a matter of law.

1. Investments in Interested Parties That MIO Manages Are McKinsey Connections

Professionals must disclose not only their own connections to the debtor and interested parties, but also the connections of their affiliates. *See In re Gen. Wireless Operations Inc.*, 2017 WL 5404534, at *2 (Bankr. D. Del. Apr. 6, 2017) ("A & G Realty shall disclose any and all facts that may have a bearing on whether A & G Realty, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors, their creditors, or other parties in interest.").[3] Rule 2014 requires professionals to list all "connections," a term that is exceedingly broad and plainly includes corporate affiliates. In that regard, the Oxford Living Dictionary defines "connection" as "[a] relationship in which a person or thing is linked or

attitude required by the Code." *In re Daig Corp.*, 48 B.R. 121, 132 (Bankr. D. Minn. 1985). Competitors have an incentive to advantage themselves at the expense of the Debtor, and customers and suppliers are creditors.

[3] *Cf. In re Trust Am. Serv. Corp.*, 175 B.R. 413, 420 (Bankr. M.D. Fla. 1994) ("To ensure themselves no conflict existed with respect to related debtors, the duty was not solely limited to Coopers and Lybrand in Tampa, but was a duty of the whole organization . . . Coopers and Lybrand had a duty to ensure themselves of no conflict with all departments and locations of its partnership.").

associated with something else."[4] And when construing statutes, courts begin "by examining the plain language," and "the words of the statute . . . are assumed to carry their ordinary meaning." *Stanford v. Comm'r*, 152 F.3d 450, 455-56 (5th Cir. 1998). *See also Kellogg Brown & Root Servs. v. U.S. ex rel. Carter*, 135 S. Ct. 1970, 1978 (2015) (referring to Black's Law Dictionary and Webster Dictionary for "ordinary meaning" of term in statute).

Most importantly, the beneficial owners of the investments in interested parties that MIO manages are McKinsey partners and employees, including, likely, those who are serving Westmoreland Coal. Rule 2014 is designed to ensure that professionals are "disinterested persons" that have no adverse interests "by reason of any direct ***or indirect*** relationship to, connection with, or interest in, the debtor, ***or for any other reason***." 11 U.S.C. § 101(14)(C) (emphasis added). McKinsey's relationships with its parents, MIO, and its other affiliates clearly fit comfortably within the "indirect relationship" and "any other reason" language of § 101(14). Connections of any of those entities bear on the business and financial interests of the others and must be disclosed for a proper assessment to be made under § 327(a). Thus, as Judge Huennekens held in *In re Alpha Natural Resources, Inc.*, No. 15-BK-33896 (Bankr. E.D. Va.) ("***ANR***"), Dkt. 2895, McKinsey is obligated to disclose the connections of its direct and indirect parent entities, as well as its corporate siblings (such as MIO)—in short, the connections of the entire McKinsey "organization."[5]

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[4] "Connection," def. noun 1, *Oxford Living Dictionary*, Oxford Univ. Press, https://en.oxforddictionaries.com/definition/connection (Nov. 28, 2018).

[5] McKinsey has falsely touted an investigative report arising from the Puerto Rico bankruptcy as validating its claim that a "wall" exists between MIO and the rest of McKinsey. While acting as a professional in the Puerto Rico bankruptcy, McKinsey concealed its ownership of approximately $20 million in bonds issued by the government of Puerto Rico. To evaluate the propriety of that ownership, the PROMESA Board, which oversees the Puerto Rico bankruptcy, commissioned an investigation into McKinsey's ownership of Puerto Rico debt, while acting as a professional in the bankruptcy itself. The report found McKinsey's MIO investments "particularly

2. Whether there Is A "Wall" Between MIO and the Rest of McKinsey Is Irrelevant to McKinsey's Disclosure Obligations.

As to the so-called "wall" between MIO and McKinsey RTS, even if it exists (and, as explained in the next section, it does not), it is wholly irrelevant. The statutory language quoted above is clear; professionals cannot have ownership interests in the debtor or creditors. Nowhere in the text of the relevant statutes or the accompanying legislative history is any exception made, express or implied, for investment interests by affiliates that are unknown to the entity seeking professional employment in a Chapter 11 case. McKinsey cites no case law to support such an exception. *See* Mar-Bow's Amended Objection, Dkt. 669 ¶¶ 76-85 (detailing why purported separation between MIO and McKinsey is legally irrelevant). And in fact, Judge Huennekens rejected McKinsey's "blind trust" argument in the *ANR* case, requiring disclosure of McKinsey's MIO connections.[6]

McKinsey claims that other industry professionals agree with its view that it is not required to disclose MIO's connections. However, that stance has no basis in ***law***, and the opinions or

problematic, as it gives rise to the appearance of conflict…" See *Informative Motion Regarding Publication and Filing of Final Investigative Report -McKinsey & Co., Inc*., Commw. of Puerto Rico Bankruptcy, Case No. 17-03283 (D. P.R. 2/18/19), Doc. No. 5154 at p. 92. During the investigation, McKinsey argued that the MIO was sufficiently separate from McKinsey's consulting affiliate to justify McKinsey's non-disclosure of MIO's ownership of Puerto Rico's assets. The report disagreed and recommended that McKinsey disclose the financial interests of the MIO stating, "MIO should disclose investments in Puerto Rico public debt made through Separately Managed Accounts even though they are managed by a Third-Party Manager because MIO has access to information detailing those holdings." Id. at 91. Thus, McKinsey's arguments about the MIO being separate, independent, a blind trust or existing behind an imaginary wall, did not persuade the independent investigators in the Puerto Rico bankruptcy. So too they should not persuade this Court.

[6] *See ANR* Dkt. 2895 (Order Compelling McKinsey Recovery & Transformation Services U.S., LLC, Turnaround Advisor for the Debtors, to Comply with the Requirements of Bankruptcy Rule 2014, filed July 1, 2016) at 2.

practices of other self-interested professionals have no bearing whatsoever on what the law is, particularly where (as here) the language of the operative statute and rules are clear and unambiguous. *See, e.g., Guilzon v. Comm'r*, 985 F.2d 819, 823 n.11 (5th Cir. 1993) ("Fifth Circuit law is crystal clear that when . . . the language of a statute is unambiguous, this Court has no need to and will not defer to extrinsic aids . . . . Clear statutory language is dispositive. To paraphrase Justice Holmes' oft-quoted statement, we do not inquire what Congress meant; we only ask what it said.") (citations omitted).

In the only case in which a professional attempted a similar argument, the court readily rejected it. In *In re Glosser Bros., Inc.*, 102 B.R. 38, 40 (Bankr. W.D. Pa. 1989), the United States Trustee objected to an application to employ Bear Sterns on the grounds that it held equity interests in the debtor. Bear Sterns responded that it was creating a wall:

> Bear Stearns asserts that it has undertaken internal precautions to protect its newly-found disinterested status. Specifically, all Bear Stearns' employees have been or will be advised of the potential for conflict and a "chinese wall" is being or will be "erected" around the team of professionals which will be associated with the Debtors' proceedings.

The court, however, found the proposed "wall" insufficient:

> Regarding Bear Stearns' "chinese wall", we admit to being less than confident that this wall is either impenetrable or capable of being monitored by the Creditors' Committee and this Court from a five hundred (500) mile distance. To the contrary, given the recent history regarding other investment bankers, we question the prophylactic quality of this creation. Bear Stearns is too close to the situation to ensure the avoidance of impropriety, and we are too far removed from Bear Stearns to assure it. At the very least, there is the appearance of impropriety.

McKinsey must disclose all equity or debt investments held or managed by it or any of its affiliates (including MIO) in any Debtor, or in any party in interest, competitor, customer, or supplier. If such interests exist (and they do), McKinsey must be disqualified.

B. There is No Wall Between MIO and the Rest of McKinsey.

As explained in the preceding section, whether information passes between MIO and the rest of McKinsey concerning MIO investments and McKinsey's work in Chapter 11 cases is irrelevant to McKinsey's Rule 2014 disclosure obligations. However, even if the Court viewed that issue as somehow germane to McKinsey's qualifications, it is abundantly clear that the so-called "wall" between MIO and McKinsey RTS is a fantasy concocted by McKinsey to justify hiding its investment interests so that it can continue secretly profiting from its work as a restructuring professional. The record is now clear and unimpeachable on the following facts:

- McKinsey, through MIO, profited handsomely from its work in the *ANR* case by virtue of its investment in Whitebox, which in turn owned Contura, the newly-formed company that received the ANR estate's most valuable assets. *See ANR* Dkt. 4124; *ANR* Dkt. 4128 ¶¶ 21-37.

- For years, John Garcia, the head of McKinsey RTS, sat on MIO's board of directors with full visibility into, and approval authority over, MIO's investment activity. *See ANR* Dkt. 4164 ¶¶ 4-14.) He only resigned from MIO's board after Mar-Bow exposed his dual role. Declaration of Casey Lipscomb, *ANR* Dkt. 4152, filed Sept. 12, 2018, p. 3, ¶ 8. Historically, MIO directors have been drawn heavily from the ranks of the management of other McKinsey entities. *See* **Exhibit 3**.

- All of MIO's pension fund investments are available to any member of the public with internet access, which obviously includes the entire staff of McKinsey RTS. Those investments are listed in McKinsey's annual Form 5500 filings with the Department of Labor for the McKinsey Master Retirement Trust. In addition, some of MIO's direct (i.e., non-pension) investments are disclosed in SEC Form 13-F filings. Both Form 5500 and and Form 13-F filings are available online to the general public. *ANR* Dkt. 4124.

- McKinsey repeatedly misled the U.S. Trustee and the *ANR* court regarding Garcia's dual roles at MIO and McKinsey RTS, leading to a scathing objection by the U.S. Trustee in that case. *ANR* Dkt. 4164 ¶¶ 4-14.

- Even when ordered by Judge Heunnekens to disclose the MIO's connections *in camera*, McKinsey withheld its Whitebox / Contura connection (among others), drawing pointed and well-justified criticism from the *ANR* court:

> THE COURT: [The Mar-Bow allegations are] very serious. . . .

> MCKINSEY COUNSEL: [Y]ou found that just on the basis of there being an RTS employee on that MIO board, that we had to disclose all of MIO's connections. And we did disclose them to you.
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> THE COURT: Well, Contura wasn't on the list. . . .
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> THE COURT: Whitebox wasn't on the in camera disclosures.
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> MCKINSEY COUNSEL: And the only reason for that was that it wasn't on -- that it wasn't on the interested party list that we got from Jones Day.
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> THE COURT: But that's not -- you don't get to rely on that. Everyone's got to still disclose their connections. And one like that would sort of be -- if it is true, sort of be a loud beacon. How could you miss that?
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> . . .
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> THE COURT: I don't need more briefing. I've read through all of everybody's submissions in this case. And these are some of the most serious allegations I've ever seen. . . . [W]e've got to get to the bottom of it.

Transcript, Hearing on Mar-Bow's Motion to Reopen, Jan. 9, 2019, *ANR* Dkt. 4182 at 23:18-25:9, 31:19-24. *See also* Mar-Bow's Amended Objection, Dkt. 669 ¶¶ 71-75 (detailing why MIO is not, in fact, separate from the rest of McKinsey). All of the foregoing information was obtained through private research; discovery and compulsory process will undoubtedly reveal much more.

Strikingly, the Financial Times recently reported that in the 25 years since the founding of MIO, its flagship hedge fund had "***made money in 24 out of the past 25 years***—a period that includes the dotcom bust and the global financial crisis of 2008-09—earning hundreds of millions of dollars for McKinsey partners and alumni." It further noted that "[o]ver the same period, the average fund of hedge funds has ***lost money in five years***." And ***in 2014, while "the average***

hedge fund returned about 4 per cent," "the MIO Partners' main fund, which manages the fortunes of McKinsey's partners, ***made nearly 14 per cent***."[7]

Thus, there is no "wall" between MIO and the rest of McKinsey. The critical issue before this Court, then, is simple: are there any equity or debt investments held or managed by McKinsey or any of its affiliates (including MIO) in any Debtor, creditor, or other party in interest? McKinsey could easily disclose that dispositive information within twenty-four hours if ordered to do so. The Court should issue that order and, when the response inevitably confirms that McKinsey does in fact have financial interests in the Debtor and other interested parties, disqualify McKinsey.[8]

C. The "Protocol" Is No Excuse to Delay Disclosure of McKinsey's Investments in Interested Parties.

Mar-Bow anticipates that McKinsey will argue that the Court should defer action on this motion until it has completed its "protocol." Any such position is yet another delay tactic by McKinsey to avoid accountability and required disqualification. McKinsey has suggested that its "protocol" may ultimately require it to disclose MIO connections to interested parties. For obvious reasons, Mar-Bow believes that the odds of that occurring are less than one percent. But even taking McKinsey's concession at face value, if the "protocol" will in fact require disclosure of

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[7] *See* Harriet Agnew, Miles Johnson, & Patrick Jenkins, *Inside McKinsey's private hedge fund*, Financial Times, June 6, 2016, available at https://www.ft.com/content/7c6700bc-2976-11e6-8b18-91555f2f4fde (emphasis added).

[8] Even if the Court viewed the purported "wall" between MIO and McKinsey as relevant, and even if it viewed the foregoing facts concerning the non-existence of the "wall" as subject to reasonable dispute, the obvious and appropriate course would be immediate, extensive, and searching discovery concerning whether there is in fact an informational barrier between MIO and the rest of McKinsey.

MIO connections, there is no reason to wait, at a minimum, an additional four to six months before the Court receives this critical information.

In reality, the "protocol" will likely parrot McKinsey's self-serving view of MIO disclosure obligations, albeit adorned with the window dressing of "expert" opinion. However, and as noted above, any assertion by McKinsey's "protocol" to that effect will be wrong as a matter of law, and no amount of cherry-picked "expert" musings can change what the law plainly states: professionals seeking employment in Chapter 11 cases *must* disclose financial interests in debtors, creditors, and other Interested Parties, and such interests are disqualifying. Therefore, no matter what McKinsey's "protocol" ultimately says, the information requested by this motion must be provided to the Court. That being the case, there is no reason to delay disclosure any further.

McKinsey may also argue that the "protocol" might require disclosure of MIO connections subject to confidentiality protections, and that the Court may accept that suggestion. As a preliminary matter, Judge Huennekens initially adopted that same approach in *ANR*, allowing McKinsey to disclose MIO connections *in camera*. That decision, of course, was a recipe for fraud and deception; without the assistance and input of interested parties, the court had no practical means to evaluate the sufficiency or accuracy of McKinsey's claims. And indeed, as noted above, time has shown that McKinsey's *in camera* disclosures in *ANR* were in fact false and concealed MIO's lucrative interest in the reorganized debtor, Contura. This Court rightfully criticized the use of *in camera* procedure in *ANR*, emphasizing in no uncertain terms the public interest in full transparency. Dkt. 1585 ¶ 43. The *ANR* Court also later recognized that its original decision to allow *in camera* disclosure of the MIO's connections was mistaken and abused by McKinsey. *ANR* Dkt. 4198. For the foregoing reasons, the Court should require immediate public disclosure

of MIO's financial interests in the Debtors, creditors, and other Interested Parties, without regard to what McKinsey's "protocol" might or might not say on the topic and without waiting for it.

Conclusion

For the foregoing reasons, the Court should order McKinsey, within three days of the date of its Order, to (a) identify all equity or debt investments held or managed by it or any of its affiliates (including MIO) in any Debtor, or in any party in interest, competitor, customer, or supplier, and (b) disclose information sufficient to allow the Court to evaluate the amount and nature of those investments.

Respectfully submitted, April 9, 2019.

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Certificate of Service

I certify that on April 9, 2019, I caused a copy of this pleading to be filed through the Court's electronic filing system and thereby served all parties registered to receive such service.

/s/ Christopher Murray
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